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IN THE

Supreme Court of the United States

October Term, 1968
No. 796

THE DREDGE CORPORATION, a Nevada Corporation,
Petitioner,

vs.

J. RUSSELL PENNY, etc.,
Respondent.

THE DREDGE CORPORATION, a Nevada Corporation,
Petitioner,

vs.

E. J. PALMER, etc.,
Respondent.

Appendix to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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APPENDIX D.

Judgment.

United States Court of Appeals for the Ninth Circuit.

E. J. Palmer, State Supervisor, Bureau of Land Management et al., Appellants vs.The Dredge Corporation, a Nevada corp., Appellee. No. 21,435.

APPEAL from the United States District Court for the District of Nevada.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and the causes are remanded with directions to enter judgment for the defendant.

Filed and entered June 26, 1968.

APPENDIX E.

Judgment.

United States Court of Appeals for the Ninth Circuit.

J. Russell Penny, State Supervisor Bureau of Land Management, et al., Appellants, vs. The Dredge Corporation, a Nevada Corp., Appellee. No. 21436.

APPEAL from the United States District Court for the District of Nevada.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and the causes are remanded with direction to enter judgment for the defendant.

Filed and entered June 26, 1968.

APPENDIX F.

Order Denying Petition for Rehearing.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, September 30, 1968.

Before: Barnes, Hamley and Browning, Circuit Judges.

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellee filed September 9, 1968 and within time allowed therefor, and valid extension thereof, by rule of court, for a rehearing of above cause be, and hereby is denied.

APPENDIX G.

Judgment.

In the United States District Court for the District of Nevada.

The Dredge Corporation, Plaintiff, vs. E. J. Palmer et al., Defendants. Civil No. 366.

The Dredge Corporation, Plaintiff, vs. J. Russell Penny et al., Defendants. Civil No. 396.

These consolidated cases were commenced by Plaintiff following contest proceedings instituted by the Department of Interior, taken against thirty-six sand and gravel placer mining claims of the Plaintiff. Following hearings before hearing examiners and review by the Director of the Bureau of Land Management, the Secretary of Interior held all the Plaintiff's claims to be invalid because of lack of discovery. Recently, the Ninth Circuit, in *Coleman et al v. United States,* No. 20,227, decided June 21, 1966, struck down the "present marketability" test of *Layman v. Ellis* and *Foster v. Seaton.* From a careful examination of the written decisions of the hearing examiners, the review and decisions on review of the Director of the Bureau of Land Management and of the Secretary of Interior, it is unclear to this Court whether the claims were held to be invalid applying the historic test of *Castle v. Womble* or under the present marketability test or that the claims were held to be invalid under a combination of both tests.

Therefore, the decision of the Secretary of Interior in both of these cases, invalidating Plaintiff's mining claims, is not in accordance with the law. Judgment is entered in favor of the Plaintiff and against the De-

fendant in both cases, reversing the decisions of the Secretary of Interior and remanding the cases to the Department of Interior for further proceedings and decisions in accordance with the standards established in *Coleman et al v. United States.*

Dated: August 8th, 1966.

/s/ Roger D. Foley
Roger D. Foley
United States District Judge